

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CLARIFYING)
EXCEPTIONS TO THE URBAN GROWTH) RESOLUTION NO. 00-3016
MANAGEMENT FUNCTIONAL PLAN)
ORDINANCE NO. 96-647C AND OBJECTIVE)
5.3 OF THE REGIONAL URBAN GROWTH) Introduced by Mike Burton
GOALS AND OBJECTIVES)
)

WHEREAS, the Metro Regional Urban Growth Goals and Objectives (“RUGGO”) allow local governments to request exceptions to the requirements of regional functional plans; and

WHEREAS, Title 8 of the Metro Urban Growth Management Functional Plan (“UGMFP”) at Metro Code 3.07.820 provides examples of the type of information that should be submitted to the Metro Policy Advisory Committee (“MPAC”) and the Metro Council in support of a request for an exception; and

WHEREAS, until recently, no local government had requested an exception to the UGMFP. Some local governments are now requesting exceptions as they work to obtain full compliance with the UGMFP; and

WHEREAS, the Metro Council desires to clarify the exception application process by identifying the information that local governments should provide when seeking an exception to the requirements of the UGMFP; and

WHEREAS, the Metro Council intends that the information be provided in addition to the requirements of Title 8 of the UGMFP at Metro Code 3.07.820; now, therefore,

BE IT RESOLVED:

1. All requests for exceptions to the UGMFP should include information that addresses the following:
 - a. Granting the exception will not have a negative impact on the region's ability to achieve the 2040 Growth Concept as a whole.
 - b. Granting the exception will not have a negative impact on the jurisdictions' overall ability to comply with the requirements of the Functional Plan.
 - c. Granting the exception will not have a negative impact on adjacent jurisdictions.
 - d. Granting the exception will not have a negative impact on the jurisdiction's ability to meet the objectives of 2040 within its boundaries.
 - e. The jurisdiction has the opportunity to annex additional land into its city boundary.
 - f. Granting an exception will not compromise the jurisdiction's ability to meet Statewide Planning Goals.

ADOPTED by the Metro Council this _____ day of _____ 2000.

WITHDRAWN
David Bragdon, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 00-3016 TO CLARIFY THE EXCEPTION PROCESS FOR THE URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN AND TO ESTABLISH CRITERIA TO CONSIDER REQUESTS FOR EXCEPTIONS

Date: November 28, 2000

**Presented by: Mary Weber
Prepared by: Brenda Bernards**

PROPOSED ACTION

Adoption of Resolution No. 00-3016 to clarify the Exception Process set out in the Urban Growth Management Functional Plan and to establish criteria to consider requests for exceptions.

EXISTING LAW

Metro Code 3.07.820.B (Title 8 of the Urban Growth Management Functional Plan) provides that Metro Council may grant exceptions to any of the requirements of the Urban Growth Management Functional Plan (Functional Plan) as provided for in the Regional Urban Growth Goals and Objectives, Section 5.3, after review by the Metro Policy Advisory Committee (MPAC).

BACKGROUND

As the jurisdictions work through the Functional Plan compliance process, a number of requests for exceptions to the requirements of the Functional Plan have been received.

The requests for exceptions to the requirements are part of the larger compliance process that is made up of four elements.

Compliance with Functional Plan Requirements	Procedure to Follow
Compliance/Substantial Compliance with the Requirements	Administrative Process
Request for Time Extensions	Council Legislative Process
Map Amendments: <ul style="list-style-type: none">• Correct Inaccuracies• Refinements based on compliance work	Council Legislative Process
Exception to the Requirements	Exceptions Process

Each of these elements brings the local jurisdictions into compliance with the requirements of the Functional Plan either through an amendment to local regulations, a refinement to Metro maps or, as is the case of the exceptions, excusing a jurisdiction from compliance with an element of the Functional Plan. Of course, Metro Council always has the option of amending its policies.

Decisions regarding the first three elements are made based on the information provided by the local governments. Exceptions, the fourth element, forgive an obligation on the part of the local government to meet a Functional Plan requirement. These may be text or map requirements reflected in the Functional Plan. Because of this, it is proposed that decisions regarding this element require the requesting jurisdiction to address the six exception criteria described on page 3 of this report.

As noted above, map amendments requested by the jurisdictions are subject to Council approval. Staff may determine that the requested amendments represent either corrections of mapping inaccuracies or refinements to the maps resulting from local efforts to comply with the requirements of the Functional Plan and not a departure from the intent of the 2040 Growth Concept. If the Council determines that the requested amendment is in fact a departure, the request would be subjected to the full exception process and the jurisdiction would need to address the six exception criteria.

Metro Code Section 3.07.820B provides some guidance to local governments and the Metro Council on the requirements of requesting and granting an exception to Functional Plan requirements. The language in the code defines specific evidence that the requesting jurisdiction must provide to the Metro Council. However, the language is not inclusive of all the potential exception requests that the Metro Council might see. In addition, the code does not provide any criteria to judge the merits of the exception request.

EXCEPTION PROCESS

Metro Council consideration of exceptions can be triggered in one of two ways. Metro code 3.07.802.B.1-5 allows a jurisdiction to request an exception to a Functional Plan requirement. Alternatively, the Metro Council or the Executive Officer may determine that an exception is needed based on evaluation of a jurisdiction's compliance report. In either case, all exception requests are reviewed by MPAC, with final decisions made by the Metro Council.

Both MPAC and the Metro Council receive notice when an exception request is made by a local jurisdiction or determined to be needed by the Metro Executive Officer. MPAC reviews the exception prior to Metro Council action. MPAC may take the following actions:

- refer the compliance issues back to the jurisdiction and Executive Officer for resolution;
- work with the local jurisdiction to resolve the issue;
- trigger the conflict resolution process as outlined in RUGGO 5.3; or
- forward the request to Metro Council – with or without a recommendation for action.

Upon receipt of an exception request, after the MPAC review, the Metro Council may take the following actions:

- grant the exception request
- deny the exception request
- refer the issue back to MPAC to begin the conflict resolution process as outlined in RUGGO 5.3; or
- refer the issue back to the jurisdiction and Executive Officer for resolution.

The conflict resolution process as described in RUGGO 5.3 has formal steps to resolve disagreements between Metro and local jurisdictions. Under this process, Metro and affected local governments notify each other of apparent or potential local inconsistencies with the Functional Plan. Metro staff analyzes the apparent inconsistencies for MPAC. MPAC consults the affected jurisdictions and attempts to resolve the inconsistencies.

MPAC then conducts a public hearing and makes a report to Metro Council regarding instances and reasons why a jurisdiction has not adopted changes needed to be consistent with the Functional Plan. Metro Council reviews the MPAC report, holds a public hearing on any unresolved issues and makes a final decision on the issue. The Metro Council may act to resolve any conflict as follows:

- amend the Functional Plan;
- make a formal interpretation of a Functional Plan provision;
- initiate proceedings to require a comprehensive plan change; or
- find that there is no inconsistency between the comprehensive plan and the Functional Plan.

A diagram of the Exceptions Process is attached.

EXCEPTION CRITERIA

The evaluation of requests for exceptions will require a balancing of a number of factors including local needs versus meeting regional goals and objectives. A key lesson of the process that developed the 2040 Growth Concept was that it is desirable to have distinct communities with their own identities. When granting or not granting an exception request, consideration will need to be given to the importance of recognizing the uniqueness of the jurisdictions versus the impact on the region as a whole, the adjacent jurisdictions' and on that jurisdiction's ability to implement the 2040 growth concept. In addition, while the individual requirements of the Functional Plan all move toward the implementation of the 2040 Growth Concept, they do not all have the same impact. For example, both allowing the partitioning of lots at least twice the minimum lot size and setting minimum densities provide for more efficient use of land inside the boundary. However, the potential capacity lost by an exception to lot partitions is unlikely to be as great as the potential capacity lost without minimum densities in place. Metro Council will need to weigh each request for an exception based on the circumstances of that jurisdiction.

When requesting an exception, the local jurisdiction will need to address the applicable sections of Title 8 of the Functional Plan and the recommended six criteria below. In addressing the recommended criteria the jurisdiction will need to demonstrate that the requested exception will not impede the implementation of the 2040 Growth Concept and the jurisdiction's ability to meet the other requirements of the Functional Plan. Also, the recommended criteria deal with the impact of the exception on the adjacent jurisdictions and the region as a whole. The six recommended criteria that the jurisdictions would need to address before an exception request is considered are outlined below.

1. *Granting the exception will not have a negative impact on the region's ability to achieve the 2040 Growth Concept as a whole.*
 - What is the affect of not complying with this requirement on the region's ability to meet the 2040 Growth Concept as a whole?

2. *Granting the exception will not have a negative impact on the Jurisdictions' overall ability to comply with the requirements of the Functional Plan.*
 - Will this exception mean other elements of the Functional Plan will not be met?
 - How well has the jurisdiction meet other requirements of the Functional Plan?
 - How close to full compliance is the jurisdiction?

3. *Granting the exception will not have a negative impact on adjacent jurisdictions.*
 - Have the adjacent jurisdictions complied with these requirements?
 - What is the impact on adjacent jurisdictions if the exception is granted?
 - Does this create a competitive advantage/disadvantage?

4. *Granting the exception will not have a negative impact on the jurisdiction's ability to meet the objectives of 2040 within its boundaries?*
 - Will this compromise the jurisdiction's ability to build 2040?
 - How much new development will be excepted?
 - What is the jurisdiction's share of the new development?

5. *The jurisdiction has the opportunity to annex additional land into its City boundary.*
 - Is there potential for the jurisdiction to annex land?
 - What will the effect of the exception have on new lands brought into the jurisdiction?
 - Will the requirement of the Functional Plan apply to these areas?

6. *Granting an exception will not compromise the jurisdiction's ability to meet Statewide Planning Goals.*
 - Will complying with the requirements of the Functional Plan mean the jurisdiction is unable to meet the requirements of the statewide planning goals?

EXCEPTION REQUESTS

Metro staff has been working closely with the local government staff on compliance issues. Below is a list of exception requests that have been received to date:

- Durham: The City has requested an exception to minimum densities and some maximum parking standards.
- King City: The City has requested an exception to the accessory dwelling unit requirement.
- Maywood Park: The City has requested an exception to the housing capacity target.

Anticipated exception requests are primarily for housing and employment capacity targets.

ADDITIONAL OPTIONS

Metro Council Formal Interpretation of an Issue – Final Decisions (appealable to LUBA)

The Metro Council could conduct an official interpretation of its code. In the past interpretations have been used by staff on very minor details. These minor details have generally related to missing words such as “and” or “or.” The difficulty with this action is a limiting interpretation could serve to restrict the flexibility that is built into the Functional Plan by determining there is only one way for a particular requirement to be met. While an interpretation may also broaden the ways the requirements could be met, to date the nature of the inquiries into interpretations of the code have been more to give greater specificity to how the code should be implemented at the local level.

Amending the Functional Plan

Metro Council has the option to amend the Functional Plan to either clarify its intent, to add or remove regulations or to change existing regulations. Once local governments comply with the first round of Functional Plan requirements, the code should be amended to remove housekeeping provisions related to dates and reporting and add new provisions to ensure consistency. In the future, the Executive Officer will be bringing before the Metro Council a number of changes to the Functional Plan that either address errors, help clarify an issue or remove provisions that are no longer applicable.

RECOMMENDATION

It is recommended that Metro Council adopt Resolution No. 3016 to establish an Exception Process for the Urban Growth Management Functional Plan.

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EXCEPTIONS PROCESS FOR FUNCTIONAL PLAN REQUIREMENTS

